

ESTTA Tracking number: **ESTTA427675**Filing date: **08/30/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	VL Raymer		
Entity	Individual	Citizenship	UNITED STATES
Address	c/o Karen J. Bernstein, LLC New York, NY 10017 UNITED STATES		

Attorney information	Karen J. Bernstein Law Offices of Karen J. Bernstein, LLC 100 Park Avenue, Suite 1600 New York, NY 10017 UNITED STATES kjb@karenbernsteinlaw.com Phone:(212) 339-9955
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**Registration Subject to Cancellation**

Registration No	4011236	Registration date	08/16/2011
Registrant	Pale Enterprises LLC 3303 Main Street, suite 305 Houston, TX 77002 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 1994/08/01 First Use In Commerce: 1994/08/01 All goods and services in the class are cancelled, namely: Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and multi media performances by a musical group; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	raymer petition to cancel PALE.pdf ( 6 pages )(28001 bytes ) exhibit 1.pdf ( 1 page )(9835 bytes ) raymer pale cancel Exh 1.pdf ( 10 pages )(2608279 bytes ) exhibit 2.pdf ( 1 page )(9867 bytes ) raymer pale cancel Exh 2.PDF ( 2 pages )(2036889 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/kjb/
Name	Karen J. Bernstein
Date	08/30/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 4,011,236

For the mark: PALE  
Int'l Class: 41  
Date Registered: August 16, 2011

	X	
	:	
<b>VL RAYMER,</b>	:	Cancellation No.:
	:	Registration No.: 4,011,236
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PALE ENTERPRISES, LLC</b>		:
	:	
<b>Registrant.</b>	:	
	:	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION TO CANCEL**

VL Raymer, by and through her attorney, the Law Offices of Karen J. Bernstein, LLC, hereby requests that the Trademark Trial and Appeal Board cancel Registration No. 4,011,236 (the "Subject Registration"), issued on August 16, 2011, for the mark PALE to Pale Enterprises, LLC.

As grounds for her Petition, Petitioner alleges as follows:

1. Petitioner VL Raymer is an individual who resides in San Juan Bautista, California.
2. Upon information and belief, Registrant Pale is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Houston, Texas.

3. Registrant obtained the Subject registration for PALE in connection with “Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and multi media performances by a musical group; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band” in Class 41.

4. On June 23, 2010, the application for the Subject Registration (the “Application”) was originally filed in connection with “Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and muliti media performances.; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band” in Class 41. A copy of the Application is annexed and identified as Exhibit 1.

5. Upon information and belief, Registrant, at the time of filing its Application, was not offering some or all of the services listed in its recitation of goods and services under the PALE mark.

6. Upon information and belief, the Subject Registration was fraudulently procured.

7. Specifically, upon information and belief, on or about June 23, 2010, when Registrant signed the Application of the PALE Mark that was filed with the U.S. Patent and Trademark Office pursuant to 18 U.S.C. §1001, it falsely represented that Pale was offering all of the services listed in its recitation of goods and services under the PALE mark.

8. Upon information and belief, at the time this representation was made Registrant knew that it had no rights in the Subject Registration as to some or all of the services listed in its recitation of goods and services under the PALE mark when it signed the Declaration of Use and was not entitled to the Subject Registration. As a result, upon information and belief, Registrant knew that the mark covered by the Subject Registration – PALE -- was not in use for some or all of the services listed in its recitation of goods and services in interstate commerce and had not been in use in interstate commerce by Registrant in connection with the goods covered by the registration, namely, “Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and multi media performances by a musical group; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band” — since at least August 1, 1994.

9. Upon information and belief, Registrant made false statements, at the time the Declaration of Use was signed pursuant to 18 U.S.C. § 1001 that PALE was in use in interstate commerce in connection with “Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and multi media performances by a musical group; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band” and that the first date of use of the PALE mark for all of the subject services was made with the intent to induce authorized agents of the U.S. Patent and

Trademark Office to issue the Subject Registration, and reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, issue the Subject Registration.

10. Petitioner will be damaged in that on January 18, 2011, while the Application was pending before the PTO, Registrant sent a meritless cease and desist letter to Petitioner demanding Petitioner cease use of the domain name, Pale.com, which she registered years before Registrant's purported first use date of the PALE mark and has been using entirely unrelated to Registrant's use of the PALE mark.<sup>1</sup> Petitioner not only responded to Registrant by asserting her superior common law rights in PALE for other categories of goods and services, but she made several attempts to settle the matter with Registrant to no avail. A copy of Registrant's January 18, 2011 cease and desist letter is annexed and identified as Exhibit 2.

11. Petitioner will be damaged because Registrant alleges in the January 18, 2011 cease and desist letter that Petitioner infringed Registrant's PALE mark and Petitioner will be further damaged insofar as the actions and/or inactions taken by Registrant in the application for and registration of the PALE mark constitute fraud on the United States Patent and Trademark Office.

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<sup>1</sup> Contrary to Registrant's January 18, 2011 cease and desist letter, Petitioner has never been the domain registrant of Pale.net.

WHEREFORE, Petitioner prays that the within Petition be granted and U.S. Trademark Registration No. 4,011,236 be cancelled.

Respectfully submitted,

LAW OFFICES OF KAREN J. BERNSTEIN, LLC  
Attorney for Petitioner VL Raymer  
100 Park Avenue, Suite 1600  
New York, NY 10017  
(212) 339-9955 (Telephone)  
(212) 339-0046 (Facsimile)  
Kjb@karenbernsteinlaw.com (E-Mail)

Dated: New York, New York  
August 30, 2011

By: /kjb/  
Karen J. Bernstein

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has been served on Registrant by delivering said copy via First Class mail, postage prepaid to:

Pale Enterprises, LLC  
3303 Main Street, Suite 305  
Houston, Texas 77002  
**Registrant**

By: /kjb/  
Karen J. Bernstein

Dated: August 30, 2011  
New York, New York



# **EXHIBIT 1**

# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 85070201

Filing Date: 06/23/2010

*NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<u>PALE</u>
<b>*STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	PALE
<b>*MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	Pale LLC
<b>*STREET</b>	3303 Main Street, suite 305
<b>*CITY</b>	Houston
<b>*STATE (Required for U.S. applicants)</b>	Texas
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	77002

PHONE	(713) 529-9500
FAX	(713) 528-4888
EMAIL ADDRESS	daniel@music-lawyer.com
<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	LIMITED LIABILITY COMPANY
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Texas
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	041
IDENTIFICATION	Entertainment in the nature of live performances by <b>a musical group</b> ; Entertainment in the nature of visual and audio performances by <b>a musical group</b> ; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of <b>live audio, video and muliti media performances.</b> ; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/1994
FIRST USE IN COMMERCE DATE	At least as early as 08/01/1994
<b>SPECIMEN FILE NAME(S)</b>	
ORIGINAL PDF FILE	<a href="#">spec-981942522-204345860_._pale2.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT10\IMAGEOUT10\850\702\85070201\xml1\FTK0003.JPG</a>
ORIGINAL PDF FILE	<a href="#">spec-981942522-204345860_._pale1.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT10\IMAGEOUT10\850\702\85070201\xml1\FTK0004.JPG</a>
SPECIMEN DESCRIPTION	Performance poster, CD Jacket
<b>ADDITIONAL STATEMENTS INFORMATION</b>	
*TRANSLATION (if applicable)	

<b>*TRANSLITERATION</b> (if applicable)	
<b>*CLAIMED PRIOR REGISTRATION</b> (if applicable)	
<b>*CONSENT</b> (NAME/LIKENESS) (if applicable)	
<b>*CONCURRENT USE CLAIM</b> (if applicable)	
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Jack M. Terry
<b>FIRM NAME</b>	Law Office of Daneil L. Sanders
<b>STREET</b>	3303 Main Street, suite 305
<b>CITY</b>	Houston
<b>STATE</b>	Texas
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	77002
<b>PHONE</b>	(713) 529-9500
<b>FAX</b>	(713) 528-4888
<b>EMAIL ADDRESS</b>	daniel@music-lawyer.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Daniel L. Sanders
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	Jack M. Terry
<b>FIRM NAME</b>	Law Office of Daniel L. Sanders
<b>*STREET</b>	3303 Main Street, suite 305
<b>*CITY</b>	Houston
<b>*STATE</b> (Required for U.S. applicants)	Texas
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	77002

<b>PHONE</b>	(713) 529-9500
<b>FAX</b>	(713) 528-4888
<b>*EMAIL ADDRESS</b>	daniel@music-lawyer.com
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	275
<b>*TOTAL FEE PAID</b>	275
<b>SIGNATURE INFORMATION</b>	
<b>* SIGNATURE</b>	/Jack M. Terry/
<b>* SIGNATORY'S NAME</b>	Jack M. Terry
<b>* SIGNATORY'S POSITION</b>	Attorney of Record TX 19798500
<b>* DATE SIGNED</b>	06/23/2010

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## **Trademark/Service Mark Application, Principal Register**

### **TEAS Plus Application**

**Serial Number: 85070201**

**Filing Date: 06/23/2010**

#### **To the Commissioner for Trademarks:**

**MARK:** PALE (Standard Characters, see [mark](#))

The literal element of the mark consists of PALE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Pale LLC, a limited liability company legally organized under the laws of Texas, having an address of

3303 Main Street, suite 305

Houston, Texas 77002

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

#### **For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 041: Entertainment in the nature of live performances by a musical group; Entertainment in the nature of visual and audio performances by a musical group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of live audio, video and muliti media performaces.; Entertainment services in the nature of live musical performances; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band

In International Class 041, the mark was first used at least as early as 08/01/1994, and first used in commerce at least as early as 08/01/1994, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Performance poster, CD Jacket.

#### **Original PDF file:**

[spec-981942522-204345860 . pale2.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

#### **Original PDF file:**

[spec-981942522-204345860 . pale1.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

The applicant's current Attorney Information:

Jack M. Terry and Daniel L. Sanders of Law Office of Daneil L. Sanders

3303 Main Street, suite 305

Houston, Texas 77002

United States

The applicant's current Correspondence Information:

Jack M. Terry

Law Office of Daniel L. Sanders

3303 Main Street, suite 305

Houston, Texas 77002

(713) 529-9500(phone)

(713) 528-4888(fax)

daniel@music-lawyer.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Jack M. Terry/ Date Signed: 06/23/2010

Signatory's Name: Jack M. Terry

Signatory's Position: Attorney of Record TX 19798500

RAM Sale Number: 6370

RAM Accounting Date: 06/24/2010

Serial Number: 85070201

Internet Transmission Date: Wed Jun 23 21:07:36 EDT 2010  
TEAS Stamp: USPTO/FTK-98.194.25.22-20100623210736056  
098-85070201-460a95c57f5d9ee77d22d88d4c9  
df82957-CC-6370-20100623204345860386



PALE

# pale



PaLE



MANDATORY aMBULANCE

cd release @ Warehouse Live  
**MARCH 10, 2007**  
w/ the sonnier bros. band

[www.palerocks.com](http://www.palerocks.com)

[www.myspace.com/palerocks](http://www.myspace.com/palerocks)

# pale

here

1. Love Me More 2. Where Is Heaven 3. The Blood Of Human Heroes
4. My Wonderful Life 5. There 6. Glowing Black 7. 30 Pieces
8. No One Is Truly Anyone's 9. A Better Tomorrow 10. The Runner 11. Here

[www.palerocks.com](http://www.palerocks.com)

[www.myspace.com/palerocks](http://www.myspace.com/palerocks)



PE LLC 001

Copyright © Pale 2005

## **EXHIBIT 2**

# Daniel L. Sanders

Attorney at Law

3303 Main Street  
Suite 305  
Houston, Texas 77002

Telephone: (713) 529-9500  
Facsimile: (713) 528-4888  
e-mail: daniel@music-lawyer.com

January 18, 2011

VL Raymer  
P.O. Box 1118  
Gilroy, California 95021

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

(dnsvlc@aol.com)

*Re: Unauthorized use of www.Pale.com*

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Dear VL Raymer:

Please be advised that I have been retained by Pale Enterprises, LLC in reference to your improper use and registration for the internet domain [www.Pale.com](http://www.Pale.com). My client is the owner of the above tradename "Pale" and is the United States Trademark Registrant for "Pale" as evidenced by United States Trademark Serial Number 85070201.

Please be advised that your claim and registration of [www.Pale.com](http://www.Pale.com), [www.Pale.net](http://www.Pale.net), or any similar DNS descriptor is a violation of the Federal Anticybersquatting Consumer Protection Act ("ACPA") found at 15 U.S.C. Section 1125(d)). The ACPA provides that a person is liable for damages to the owner of the Trademark who registers or uses a domain name that is identical or confusingly similar to that mark and that person has a bad faith intent to profit from the mark. The ACPA entitles my client to temporary and permanent injunctive relief, lost profits, actual damages, costs of court and attorney's fees. Further, your actions have violated paragraph 2 of the Uniform Domain Name Dispute Resolution Policy ("UDRP") adopted by Internet Corporation for Assigned Names and Numbers ("ICANN"). In violation thereof your registration infringes upon or otherwise violates the rights of the rightful owner, Pale Enterprises, LLC.

To prevent the continued misuse of their tradename and mark, my clients hereby demand that you, the registrant and/or administrator, and/or licensees, affiliates, representatives, employees, and any and all other related individuals and/or business entities immediately **cease and desist from any further unauthorized use of this mark** in any capacity whatsoever without their prior written approval. This demand encompasses any variation thereof that includes the words "Pale" for any and all purposes whatsoever. Additionally, you are hereby notified to **immediately cease and desist the use of Pale.com, Pale.net, and any other similar domain derivatives thereof**, and are further required to immediately cease and desist the operation of the web site identified as [www.Pale.com](http://www.Pale.com). Furthermore, you are hereby notified that you are immediately required to notify Register.com (or any/all equivalent registration entity) to immediately remove the web address offer of sale from its web site. You are also hereby



notified that you are required to immediately notify Register.com or any other appropriate domain registration authority to transfer the ownership of the name to Pale Enterprises, LLC immediately. Failure to comply with the foregoing will constitute additional acts of infringement for which my client will immediately sue for willful infringement and related damages as well as to enjoin future unauthorized uses.

My client wishes to resolve this dispute amicably. Therefore, please contact me no later than 5:00 PM.CDST, Friday, January 21, 2011 and supply with documents evidencing your compliance with the above demands.

I thank you in advance for your prompt attention to this matter. Nothing in this letter shall be construed as a waiver of any of my clients' rights, remedies, or causes of action, all of which are expressly reserved.

Sincerely,

Daniel L. Sanders

DLS/gg